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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

Nos. 70-87, 70-5106, Consolidated

POLICE DEPARTMENT OF THE CITY OF CHICAGO, ET AL.,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

RICHARD GRAYNED,

Appellant,

vs.

CITY OF ROCKFORD,

Appellee.

CERTIORARI TO THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT, APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF FOR APPELLEE.

WILLIAM E. COLLINS,
Director, Legal Department,
City of Rockford,
425 East State Street,
Rockford, Illinois 61104,
Counsel for Appellee.

A. CURTIS WASHBURN,
MICHAEL R. MORRISON,
LARRY E. OHLSON,
CHARLES F. THOMAS,
Of Counsel.

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BRIEF FOR APPELLEE.

ADDITIONAL STATEMENT OF THE CASE.

Since the arrest of Appellant, the City Council of Rockford, Illinois, on November 15, 1971, amended Section 18.1 (i) (which under a recent recodification is now Chapter 19-13(i)) by deleting the provision "provided that this subsection does not prohibit the peaceful picketing of any

school involved in a labor dispute." This amendment and deletion has, of course, no effect on Appellant's personal situation. The amendment does have some bearing on the Fourteenth Amendment equal protection arguments advanced by Appellant. Guidance as to how to cope with disruption in and about schools would be extremely helpful to City Councils and local school boards.

The testimony of various witnesses was not ordered transcribed by the court reporter, nor was any effort made by Appellant to obtain an agreed statement of facts. Although the verdicts of the jury (Ap. 19-20) are included in the appendix, the intructions embodying the two ordinances are omitted. We presume that the jury was adequately and legally instructed.

The appendix does not include all of Chapter 28-19.2 (a), omitting the preamble thereof reading, "Be it ordained . . . that an ordinance been acted for the protection of schools . . ."

The absence of a written transcript of the testimony of the witnesses in the trial in the lower court, which lasted two whole days, (the Appendix indicates four, 18-20) makes it difficult to discuss the facts. Testimony that classes were being disturbed and disrupted by the picketing demonstrators is omitted. Testimony that the demonstrators were free to march on the sidewalk on the far side of N. Rockton Avenue (160 feet from the school building in question) and were so advised is likewise omitted. The statement that *only* Grayned (Ap. 7) was charged for violation of both ordinances is simply erroneous. Other captioned defendants were charged and prosecuted for violations of both ordinances.

In this case, it is admitted that there is a violation of both ordinances, and no complaint was made that the trial procedure, jury verdict or judgment is improper.

ARGUMENT.

I.

THE ROCKFORD ORDINANCES ARE NOT CONTRARY TO THE FIRST AMENDMENT, FREEDOM OF SPEECH AND ASSEMBLY, AND ARE NOT CONTRARY TO THE FOURTEENTH AMENDMENT.

A. Ordinances for the purpose of protecting and promoting efficient and orderly education are valid, although they may restrict freedom of speech and assembly.

This section of Appellee's brief is in answer to Appellant's arguments (A), complaining of the Rockford ordinances "because they punish efforts to exercise the right to speak, to assemble, and to peaceably petition the Government for redress of grievances all being rights protected against state interference by the Fourteenth Amendment." (Br. 9) Although this reference to the Fourteenth Amendment is repeated in Appellant's Summary Of Argument (A) and elsewhere, the main thrust of this section of Appellant's brief actually concerns the First Amendment, rights of free speech and assembly.

The right to freedom of speech and assembly is not absolute and is subject to reasonable regulations in certain areas. One such area is public education—in and around school grounds and buildings.

The Rockford ordinance (Section 19.2) specifically provides that it is an ordinance enacted for the protection of schools. The ordinance enacted for the protection of schools: The ordinance had no other purpose. The ordinances represented no attempt to restrict or regulate either speech or assembly generally, but were intended to prevent or discourage disruption of classes and instruction

by demonstrators, both student and non-student, inside and within close proximity to school buildings. As is stated in Appellant's brief (p. 6), both ordinances were passed a month before the arrest and in response to a series of incidents which had occurred.

It is generally held that the orderly and efficient process of education and the protection of schools is a legitimate state and local concern. The old 1870 Illinois Constitution provides, Article VIII, "Education—the general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." The new 1970 Illinois Constitution reaffirms the duty to provide "an efficient system of high-quality public educational institutions and services," Article X, Section 1.

Under the general police power given to municipalities by the legislature, a city may enact ordinances dealing specifically with the operation of its schools. The new Illinois Constitution granting the City of Rockford broad Home Rule powers does nothing to limit the responsibility of the municipality in this area.

This duty cannot be discharged without some restriction on time, place and manner of free speech and assembly.

The Board of Education of Community Unit School District v. *Redding,* 32 Ill. 2d 567, 207 N. E. 2d 427, (1965), a case involving "peaceful picketing by janitors participating in a labor dispute stated that (p. 431) "However, the premise that peaceful picketing is immune from all regulation and control is a false one. While picketing has an ingredient of communication, the cases make it clear that it cannot be dogmatically equated with constitutionally protected freedom of speech, and that picketing is more than free speech because picket lines are designed to exert, and do exert, influences which produce actions and consequences different from other modes of communication,"

and further states, As stated by the late Mr. Justice Frankfurter in the Hughes case: 'It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a state if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives grounds for its disallowance. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' 339 U. S. at 465-466, 70 S. Ct. at 721, 722, 94 L. Ed. at 992.

"Apart from this, however, the effect of the influence exerted by the picketing was to impede and obstruct a vital and important governmental function—a proper and efficient education of our children—making its curtailment necessary to protect the patiently overriding public interest."

This general principle, the right to reasonably regulate and restrict free speech and assembly in and about schools has been recognized by this Court.

In *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503, at 507 (1969), a case involving symbolic protest by some students, the Court said at 507, "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values *Epperson* v. *Arkansas*, 393 U. S. 97, at 104 (1968)."

The Rockford picketing ordinance is similar in purpose and comparable in form to the statute discussed in the second *Cox* case, *Cox* v. *Louisiana*, 379 U. S. 559 (1965). The Louisiana statute read (p. 560), "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge

of his duty pickets or parades in or near a building housing a court of the State of Louisiana . . ."

This Court said (p. 562), "There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy. See *Wood* v. *Georgia*, 370 U. S. 375, 383 L. Ed. 2d 569, 576, 82 S. Ct. 1364."

It is submitted that the administration of education is as much a legitimate state concern as "the administration of justice." Without both a country cannot long survive. Whether protection be that of the courthouse or the school house, there must be some safeguards.

The instant ordinances are legitimate restrictions in aid of the local control of the educational process.

B. The Rockford ordinances are reasonable in their regulation of speech, picketing and assembly. They are neither vague nor overly broad.

The duty and responsibility to regulate free speech and assembly insofar as it may interfere with orderly and efficient education being clear, the question remains: What is a reasonable regulation to accomplish this end?

Objection is made that the Rockford ordinances are "overly broad," that "these broad Rockford ordinances punish exercise of First Amendment rights without regard to the intention of the citizen . . . that they punish the use of streets and public places for the peaceful communication of views." (Br. 13)

On the contrary, it is contended that these ordinances are reasonably narrow as to time, place, and manner of demonstration and readily understandable.

It is hard to distinguish between "overly broad" and "vague". An ordinance can be too broad because it is too vague. The statute in *Thornhill* v. *Alabama*, 310 U. S. 88 (1940) relied upon by Appellant involved a statute applying not to school premises, but virtually everywhere. It read (pg. 91), "(1) Any person who, without a just cause or legal excuse therefor goes near to or *loiters about* the premise or place of business of *any other person* . . . engaged in a lawful business . . . or (2) who *pickets* the works or place of business of *such other persons* . . ."

This Court taking the statute in its entirety, both the first and second offense, held that picketing would fall under the first section and that this statute prohibited any and every conceivable type of dissemination of labor dispute information.

The Thornhill statute was obviously too broad in that it prohibited any expression of free speech or any assembly in almost any manner at almost any place, contrary to the provisions of the First Amendment. It was also vague, contrary to the provisions of the Fourteenth Amendment.

In sharp contrast, 18.1(i) prohibits a person who "knowingly pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded."

One hundred fifty feet from the building is definite, narrow and precise. The school building boundary is generally a wall or an entrance, and 150 feet or 50 yards can be easily paced off. It seemed to the legislators a sufficient distance to prevent or discourage the inevitable distraction of picketing and demonstrating to the student in class,

but sufficiently close to afford adequate and effective protest. 1500 feet might well be construed unreasonable. 50 feet would serve no useful purpose.

The spatial limitations of the ordinance would be considered reasonable to demonstrators where the main purpose is to disseminate views and opinions. If the group genuinely wanted to have their opinion registered on the minds of the students and teachers, the 150 foot limitation would ordinarily suffice for this purpose. However, if the demonstrators were more intent on disruption from the shouts, noise and antics so often found in peaceful picketing, 150 feet would indeed be distasteful.

A distance less than 150 feet obviously permits and encourages disruption about the entrances and exists of a school. Although generally, high schools have the bulk of the students entering in the morning and leaving in the afternoon, there is a certain amount of traffic through the entrances during the day. In this case, the far sidewalk, on the other side of the street, was over 150 feet away from the building. The nearer sidewalk was well within 150 feet. It can be presumed that the Rockford legislators took into consideration the location of the Rockford school buildings when they decided on the 150 foot limitation.

The 150 foot limitation certainly doesn't exclude the use of Rockford streets and public places "for peaceful communication of views". Rockford, Illinois is a city of 145,000 people. There remain miles of streets, scores of public places still available to demonstrators or pickets.

The ordinance confining the time of demonstration essentially to while the student is in class and a short period before and after the classroom session is intended to avoid entrance way disruption. It is eminently reasonable in its limitation. The limitation is sufficiently precise. It is not too difficult to determine when school is in session or going to be in session. An ordinance could set certain

times, i.e., from 8:30 a.m. to 4:30 p.m. The difficulty is not all school sessions start and end at the same time.

The "anti-noise or diversion" ordinance (sec. 19.2a) is similarly narrow in scope. In space it is confined to public and private grounds adjacent to the school buildings. This would not include streets or sidewalks other than those surrounding the building. It then prohibits "any person who shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof . . ." In time it is confined to "the school session or class." It further extends the time to "when the school premises are used for any gathering or function during the day or night time."

Again, this ordinance is narrowly limited as to time and place. The time and place is sufficient, precise or easily ascertainable.

Appellant complains, "These broad Rockford ordinances punish exercise of First Amendment rights without regard to the intention of the citizen who, in this case, sought no more than to peacefully voice his grievances and those of his fellow citizens." (Br. 13)

The "intention" of the Appellant-citizen, if by "intention" we mean his mental process at the time of the violation, would be indeed difficult to determine. Intention in these situations can only be determined circumstantially by conduct. His conduct was such as to fall within the prohibition of both ordinances. He was picketing within 150 feet of the school building, and he was making a noise or diversion which was disrupting the class.

This Court, in commenting upon the second *Cox* case, *supra*, said (p. 562), "This statute, unlike the two previously considered, is a precise, narrowly drawn regulatory statute which proscribes certain specific behavior. *Cf. Edwards* v. *South Carolina*, 372 U. S. 229, 236, 9 L. ed. 2d

697, 702, 83 S. Ct. 860. It prohibits a particular type of conduct, namely, picketing and parading, in a few specified locations, in or near court houses." The Rockford anti-picketing ordinance and its companion, anti-noise ordinance aply to a few specified locations. While it is admitted that there are generally more school houses than court houses in most communities, "150 feet of a building" is more precise than "in or near a building." "Pickets or demonstrates" is as specific as "picketing or parading." A particular type of conduct is described in both laws. Both seek to protect a particular public interest.

The Appellant's activities on the day in question were not merely symbolic demonstration as was that of the student wearing a black arm band in class as in *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503, 89 S. Ct. 733 (1969), or the draft protestor in *Cohen* v. *California*, 403 U. S. 15; 91 S. Ct. 1780 (1971), with the legend on his sweatshirt. This conduct by students, while perhaps irritating to some people, should ordinarily not result in classroom disruption. Appellant, who was not a student, was engaged in a completely different type of activity.

Appellant argues, "It would appear to be impossible, then, in light of the *Tinker* case to justify ordinances so broad they punish peaceful expression of views *outside* the school when such expression *inside* the school falls within the protected orbit of freedom of communication of ideas." (Br. 13-14)

Appellant constantly tries to equate symbolic protest with picketing. Certainly an ordinance prohibiting picketing *inside* the school, through the hallways and classrooms, could hardly be held unconstitutional.

We are confident that were Appellant merely walking by West High School wearing a black arm band, (Tinker), no arrest would have been made. Except for the fact that he

was not a student, he was free to wear any symbolic protest insigina inside the school building.

The attempt to constrne the Rockford ordinances as a complete denial of all freedom of speech and every right of assembly pervades appellant's brief. On page 19, Appellant, after pointing out that poverty and lack of control of radio, TV, newspapers and even easy access to printed handbills make the use of streets important for protest, states that the City of Rockford denies the use of public streets and hidewalks for voicing religious, political and social views. This is not the case. There are only some public streets and sidewalks which are restricted.

This being the case, the Rockford ordinances are proper. As said in the second *Cox* case, *supra*, p. 562, "A state may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law."

The Rockford ordinances are designed to assure efficient and orderly education under the law. The ordinances are narrow but still serve their purpose. They are limited to schools and the area around schools. They are not dissimilar from ordinances establishing Quiet Zones around hospitals or mental institutions. They are not dissimilar from traffic ordinances restricting the speed limit around schools when school is in session. They are not overly broad.

Nor are the Rockford ordinances vague. By the use of plain, everyday language, they are sufficiently specific to give adequate notice of their violation.

This point was considered at length in the Illinois Supreme Court *Grayned* decision but not mentioned in the *Mosley* opinion. The Illinois Supreme Court said

at page 867: "The defendant first argues that this ordinance is unconstitutional on its face because its 'terms are so vague that they fail to give the notice (of what conduct is prohibited) required by the Due Process Clause of the Fourteenth Amendment, and are so broad as to condemn the exercise of the First Amendment freedoms.' He complains repeatedly that the ordinance vests unlimited discretion in law enforcement officials to determine the prohibited conduct. We have recently considered and sustained the constitutionality of ordinances and statutes which have been challenged on grounds of being vague and overly broad, including the grounds, which are complained of here, that prescribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was prescribed. (see *City of Chicago* v. *Fort*, 46 Ill. 2d 12; *City of Chicago* v. *Meyer*, 44 Ill. 2d 1; *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) Much of what we said there has application here and there is no necessity of repetitious or extended discussion. We do observe that while the defendant charges that terms appearing in the ordinance such as 'noise' and 'diversion' lack constitutional precision and are too indefinite. Terms such as 'alarm,' 'disturb,' 'interfere with,' and 'hinder' have been determined by us to comply with the constitutional requirements of specificity. (*City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) The terms here are not constitutionally objectionable."

It is difficult to see how either ordinance could be made more specific. There is nothing vague about 150 feet from a building; "while school is in session" and "picketing or demonstrating on a public way" seem clear enough.

"A law is 'vague' when a person of common understanding cannot know what is forbidden," *Coates* v. *Cincinnati*, 402 U. S. 611 (1971).

Indeed, Appellant has difficulty in describing his conduct in terms other than those used in the ordinance. Appellant's brief (p. 6) states that he was one of the 200 people participating in a demonstration in front of Rockford's West High School. "The demonstrators were walking peacefully on the public sidewalk within 150 feet of the school, carrying signs. . . . The demonstrators included students, former students, parents of students and other concerned citizens. Grayned himself was not a student at the time of his arrest."

The incident is described as a demonstration and Appellant a demonstrator on page 9 of Appellant's brief.

Appellant complains picketing has never been defined in judicial opinions or otherwise. (Br. 21) Assuming for a moment that picketing has not been defined, this omission doesn't necessarily result in uncertainty. Perhaps the contrary is true. Many words are not defined in judicial opinions. When 200 people are marching up and down, carrying signs, they are "picketing". They are also "demonstrating", especially when they are making noise, causing a diversion resulting in disturbing the peace or good order of such school session or class thereof.

Certainly, common usage no longer confines picketing to labor disputes. In the past several years, labor picketing has been regulated to a minor role in comparison with picketing for social, political or economic protest.

This Court as recently as *Coates* v. *Cincinnati, supra,* uses the term at page ____: "Even if the assembled defendants in this case were demonstrating and picketing, we have long recognized that picketing is not solely a communicative endeavor and has aspects which the State is entitled to regulate even though there is incidental impact on speech."

The second *Cox* case speaks of "picketing and parading" (pp. 567, 578). As early as 1941, *People* v. *Levner,* 30 NYS

(2d) 487 (1941), defined peaceful picketing, both labor and non-labor (at p. 490) "viewed in this light peaceful picketing is a publicity device, a method of giving expression to opinions on vital economic, social and political issues."

Objection is made that Section 19.2, "willfully making or assisting in the making of a noise or diversion which disturbs or intends to disturb the peace or good order of the school," is vague and depends on intent or the sensitivity of unidentified persons. (Br. 22) The vice of the "anti-noise or diversion ordinance" is that its standard is wholly subjective, i.e., depends upon the judgment of some unidentified person or persons . . . that "any noise or diversion disturbs or tends to disturb the peace or good order of such school or class thereof." (Br. 21-22)

Of course, making a noise or diversion which disturbs peace or good order requires someone to make a judgment. It commences with the school administrator, making a complaint, goes on to the police officers who make an arrest, thence to the juror who determines from the facts whether the conduct falls within the ordinance before rendering a verdict and ends with the magistrate who enters judgment. These judgments are subjective in the sense that they are not amenable to objective determination. Noise is not defined in terms of decibels. "Diversion", "disturbing the peace and good order" are not broken down in the ordinance to a multitude of factual situations.

Some subjectivity is inherent in the enforcement of almost any ordinance of a breach of peace nature. It does not follow that no standards exist at all; that its enforcement is dependent upon some unidentified person's sensitivity. The Rockford ordinances are not like the Cincinnati law rejected in *Coates*, "making it a criminal offense for 'three or more persons to assemble . . . on any of the

sidewalks . . . and there conduct themselves in a manner *annoying to persons* passing by . . .' " They are narrower in application and much more objective in the determination of its prohibited conduct.

Although, "conduct that annoys some people does not annoy others." *Coates, supra,* p. ....., may be subjective, conduct "that tends to disturb the peace and good order of such school session" (anti-noise ordinance) is easily determined. If there is noise and the students are looking out windows and otherwise not studying, the peace and good order of the session is disturbed.

Appellant's brief (p. 16) compares the Rockford ordinances to the Birmingham ordinances held invalid in *Shuttleworth* v. *City of Birmingham,* 394 U. S. 147, stating that the "Rockford ordinances are substantially worse than the Birmingham ordinances . . . because the Rockford ordinances makes no provision for licensing and only the whim or complaint of a police officer in arresting or charging persons picketing or demonstrating would allow the use of Rockford streets for purposes historically protected by the Constitution and the Court of the United States." (Br. 16).

Shuttleworth involved a licensing ordinance applying to *all* of the streets in Birmingham. The ordinance authorized members of the City Commission to refuse the permit completely at their discretion, "if required by public welfare, peace, safety, health, decency, good order, morals or convenience." Again in sharp contrast to the Rockford ordinances, we have in *Shuttleworth,* a extremely broad ordinance covering every street in Birmingham, coupled with a vague, completely subjective standard so that no one could claim a license as a matter of right. Moreover, it was not an ordinance designed to protect any specific state or local problem area such as court houses or schools.

The Rockford ordinances are not comparable to the stat-

ute in *Cohen* v. *California, supra;* disturbing the peace of any neighborhood or person by offensive conduct.

The anti-picketing ordinance is quite objective and leaves no room for sensitivity.

Every person is put on notice that if within the prescribed area and at the time stated, he so conducts himself that the students in the school are disturbed or distracted from normal school affairs, that he then runs the risk of being charged with a violation of the ordinance, irrespective of his particular conduct which might or might not be proper at a different time or place. The enforcement of said ordinance is not left to the subjective discretion or whim of a police officer, as defendant contends, but with a court and jury charged with the duty of determining whether or not from the evidence and within the law that a school has been disrupted and that the defendant's conduct, in violation of the ordinances, caused or contributed to cause the disruption. These are the kind of fact questions which must be decided in almost every ordinance or statute violation case.

II.

THE EXEMPTION OF LABOR DISPUTES IN SECTION 18.1(i) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

Appellant claims that the "anti-picket and demonstration ordinance" violates the equal protection clause of the Fourteenth Amendment. No such claim is made concerning 19.2. This argument is based upon Justice Black's dissent in the second *Cox* case wherein he stated it was discriminatory to deny the Appellant and a group the use of the streets because of their views against racial discrimination, while allowing another group to use the streets to voice opinions on other subjects.

First the ordinance was framed to protect the classroom and the educational processes from disruption. There are

and have been in high schools many protests which involve matters other than racial. The firing of a teacher has been known to result in picketing and demonstration. Protest has arisen out of regulations regarding wearing apparel and hair styles. Situations arising out of high school sports have been known to result in protest demonstration and disruption. Indeed in this case the main controversy revolved around whether a Black girl should or shouldn't be a cheerleader. (Br. 9) Conduct such as the Appellant's, if it were related to non-racial school problems, would be dealt within a similar manner, and the ordinance would, without question, apply.

The Illinois Supreme Court Grayned opinion, in discussing this point (Pg. 868) said: "The defendant's complaint is directed at the part of the ordinance which provides that peaceful picketing of a school involved in a labor dispute is not prohibited. However, we do not regard the classification in the ordinance as arbitrary. While a classification cannot, of course, be arbitrary, this Court has said: 'In order to authorize a judicial review of such classifications it must clearly appear that there is no fair reason for the law that would not require with equal force its extension to others not included. The legislature may determine upon what differences a distinction may be made for the purpose of statutory classification, between provisions otherwise having resemblance, if such power is not arbitrarily exercised and the distinction has a reasonable basis.' (*Bagdonas v. Liberty Land and Investment Co.*, 309 Ill. 103, 109.) Too, we said in *People ex rel. Conservation District v. Lenover*, 43 Ill. 2d 209, 219: 'The burden of proving the arbitrariness of a classification is on the one who challenges it.' And, at page 217, 251 N. E. (2d) at page 180: 'Only if it can be said that the classification is clearly unreasonable and palpably arbitrary will a court declare the statute invalid.' We cannot say that the City Council of Rockford acted arbitrarily here in making the classification. Whether the

council considered that the livelihood of persons involved in a labor dispute would typically be concerned or that it was familiar with the usual form of labor picketing or whether other considerations led to the classification we cannot say. But we can say it would be arbitrary for us to conclude from this distance under the circumstances that the act of the city was one of arbitrary discrimination."

It should be pointed out that labor dispute exception is a reasonable classification. There is no question as admitted by Appellant and affirmed by Appellee that the Rockford ordinances were enacted to prevent and discourage school disruptions which were widespread and frequent. Both ordinances restricted their application to times when the school was in session. In the unlikely event of a labor dispute involving a school, the probabilities are this would occur eithe while the school was being built, at which time it would not be occupied by the students, or while being repaired, which ordinarily would occur during vacations. The possibility of labor picketing in front of schools is almost non-existent.

The City of Rockford is in complete agreement with the argument and authorities advanced on this point on pp. 26-30 of the City of Chicago-Petitioner's brief in the consolidated Mosley case.

The language in *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U. S. 483 (1955), is particularly pertinent: "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. *Tigner* v. *Texas*, 310 U. S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler* v. *Dental Examiners*, 294 U. S. 608. The legislature may select one phase of one field and apply a remedy there, neglecting

the others, *A. F. of L.* v. *American Sash Co.*, 335 U. S. 538. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

If the classification has some relevancy to the situation to be controlled, the classification is valid. *McGowan* v. *Maryland*, 366 U. S. 420, at 426 (1961).

Classification in all areas pervades municipal ordinances and state statutes. If there is a legitimate reason for the classification, it should be upheld. Here Rockford, along with other cities and school districts, was confronted with disruption of its schools from a multitude of people with a multitude of causes—none of which involved labor unions or labor disputes. There being no abuse in the labor area, the ordinance exempted it. Legislators pass prohibitory ordinances generally in response to some pressing need.

The exemption does not represent a preference in some views over others, but rather an effort to prohibit activities which tend to create a disturbance as opposed to activities which do not.

III.

ALTHOUGH APPELLANT DOES NOT RAISE THE POINT SPECIFICALLY IN HIS BRIEF, THERE ARE MANY REFERENCES TO CRIME AND IMPRISONMENT.

"What the City of Rockford has done . . . is convict Appellant of a crime . . ." (Br. 16) "Under Section 1.9 of the Rockford Ordinances, failure to pay a fine, even if the failure is the result of poverty of the defendant could result in imprisonment." (Br. 27)

These statements are not true.

The Illinois Statutes have long prohibited imprisonment for this type of ordinance violation. Chapter 24, Ill. Rev. Statutes (1967), 1-2-1 and 1-2-9.

Incidentally, the imprisonment section in 1.9 of the Rockford ordinances was eliminated on January 19, 1970 in conformity with state statute.

The Illinois Supreme Court in its Grayned opinion (p. 868) disposed of this contention with the following language: "It is next contended that section 19.2(a) is void because the penalty provisions applicable to the ordinance would exceed the power to impose penalties granted to municipalities by the legislature. Since section 19.2(a) itself does not contain a provision for a penalty, the general penalty section of the Code of Ordinances applies. That section (City of Rockford Code of Ordinances Ch. 28, Sec. 1.8) provides, so far as is pertinent: 'It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment . . .'

"The power of a municipality to provide for fines or penalties, as of the date of the violation here, did not include any authority to jail an offender, excepting the authority to jail in the event of failure to satisfy a fine or costs. (Ill. Rev. Stat. 1967, Ch. 24, Par. 1-2-1, Par. 1-2-9) Since a municipality can legislate only upon or with reference to that which has been authorized by the General Assembly (*People ex rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove*, 16 Ill. 2d 183, 189), that portion of the Rockford ordinance which provided for incarceration attempted to exceed the conferred authority. We consider, however, that this defect does not affect the remainder of the penalty section, that is, Section 1.8 absent the power to jail provision, or the section defining the substantive violation, that is, Section 19.2(a). In *Brown* v. *City of Chicago*, 42 Ill. 2d 501, 505, we said: 'If what

remains after the invalid portion is stricken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render void the entire ordinance unless it can be said that the city council would not have passed it with the invalid portion eliminated.' We judge that the remainder of the ordinance is complete in itself and capable of being independently executed."

The defendant was fined twenty-five dollars plus costs on each ordinance violation. Since he was not sentenced to imprisonment he has no standing in this Court to question the validity of that part of Section 1-8, Ch. 1, Rockford Code of Ordinances, which provides for imprisonment. *City of Chicago* v. *Vokes,* 28 Ill. 2d 475, 193 N. E. 2d 40; *Village of Itasca* v. *Luehring,* 4 Ill. 2d 425.

Furthermore, Section 1.5 of the Rockford Code of Ordinances as existed at the time of the arrest read and reads as follows: "The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence or paragraph of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code."

The new Illinois State Constitution, Article I, Section 14 provides as follows: "No person shall be imprisoned for failure to pay fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfuly failed to make payments." Under the circumstances; it is hardly possible that Appellant could be imprisoned because of poverty or any other reason.

Finally, Appellant refers to the violation as being a conviction of a crime (Br. 16). It is generally held in

Illinois that the violation of this type of ordinance is at most quasi criminal (*See People* v. *Stout,* 356 N. E. 2d 319; *City of Highland Park* v. *Curtis,* 83 Ill. App. 2d 218, 226 N. E. 2d 870; *City of Chicago* v. *Ballinger,* 45 Ill. App. 2d 407, 195 N. E. 2d 739.)

CONCLUSION.

It is respectfully submitted that a city or school board's interest in maintaining a functioning school system is paramount; it is no less important than the right to keep the streets open and available for public traffic or in protecting its judicial systems from pressures in and around the court house. Legislative bodies have the power to limit First Amendment rights in areas of extreme public importance. The public supported schools of our city are of such importance.

The judgment of the Illinois Supreme Court should be sustained and the Rockford ordinances declared valid.

The recital of facts supplied by the Appellant in the Illinois Supreme Court Opinion and in Appellant's appendix and brief is sufficient to warrant affirmance of the constitutionality of the anti-picketing Rockford ordinance. A picket line of 200 persons within 150 feet of a building during school hours are all the facts necessary to constitute a violation.

Respectfully submitted,

WILLIAM E. COLLINS,
Director, Legal Department,
City of Rockford,
425 East State Street,
Rockford, Illinois 61104,
Counsel for Appellee.

A. CURTIS WASHBURN,
MICHAEL R. MORRISON,
LARRY E. OHLSON,
CHARLES F. THOMAS,
Of Counsel.